

Terms & Conditions



These Terms and Conditions (the "Terms and Conditions") govern the product order between Integrated Illumination Systems, Inc. ("Seller"), a Connecticut corporation having a principal place of business at 355 Bantam Lake Road, Morris, Connecticut, 06763, U.S.A. and the buyer identified on the purchase order to which these Terms and Conditions are attached ("Buyer"). No purchase order, acknowledgment form, or other ordering document or communication from either party shall vary the terms and conditions in these Terms and Conditions unless both parties expressly agree in writing. In the event of any conflict between the terms and conditions herein and those of any purchase order, acknowledgment form or other ordering document or communication, the terms and conditions of these Terms and Conditions shall prevail.

1. Orders; Purchase Commitment. All purchases of products and services ("Products") by Buyer from Seller shall be made by means of a purchase order issued to Seller by Buyer (each, an "Order"). Each Order shall set forth, at a minimum, a list of the quantity and price of Products covered by the Order, the requested delivery date, and the authorized signature of Buyer. Any contingencies, modifications or additions to Products that Buyer sets forth in any Order are not binding on Seller until Seller agrees to them in writing. Either party's commencement of performance, delivery or acceptance of Products shall not be deemed or construed as acceptance of any additional terms and conditions contained in an Order. All Orders are subject to acceptance by Seller. Seller shall acknowledge Orders in writing within ten (10) days after receipt. In no event shall any Order be binding on Seller until the Order and Seller's acknowledgment are in agreement as to the Products ordered, pricing, delivery dates, and all other material terms.

2. Delivery; Title; Risk of Loss. Products will be shipped F.O.B. Seller's Morris, Connecticut, U.S.A. facility. Seller will arrange for shipping via common carrier or based on the request of the Buyer. Title and risk of loss or damage to the Products will pass to Buyer when delivery is made to the possession of the Buyer. Seller shall not be liable for any damage or penalty for delay in delivery. Prices do not include freight, delivery, shipping and insurance charges, which if applicable, will be billed separately and shall be payable by Buyer in accordance with section 3 Payment; Taxes. Seller shall use reasonable efforts to ship the Products on the shipment date reasonably requested in each Order; however, Seller shall not be liable for any loss, expense or damage incurred by Buyer if Seller fails to meet the shipment date requested in any Order.

3. Payment; Taxes. Buyer shall pay for Products ordered under these Terms and Conditions within thirty (30) days from date of invoice for such Products, without condition, reserve or set-off. Payment of other charges (including, without limitation, maintenance and support service charges) invoiced separately shall be made within thirty (30) days of the date of the applicable invoice. Cancellation or modification of any order shall be agreed to in writing by both parties prior to such modification or cancellation. Prices and delivery, installation, maintenance and support, and other fees are exclusive of all sales, use, valued added and other taxes levied against the sale, delivery, installation, maintenance and support, or use of the Products.

4. LIMITED WARRANTY.

4.1 Limited Warranty. Products are warranted to be free from material defects in material and workmanship and to conform substantially to Seller's then-current (as of the date of Product shipment) user documentation and specifications for a period of one year from the date of Product shipment (the "Warranty Period"), provided the Products are used under those operating conditions (including electrical values and environmental conditions) described in Seller's then-current user documentation and specifications for such Products. Seller shall not be liable under the foregoing warranty if Buyer fails to provide Seller with notice of the alleged defect during the Warranty Period.

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4.2 Remedies. In the event a Product does not comply with the foregoing express warranty, Buyer may notify Seller within the Warranty Period and if so notified Seller will, at Seller's option: (a) provide a replacement for such Product or defective component or part thereof that has caused the warranty claim (such Product or defective component or part thereof that has caused the warranty claim, the "Warranty Item"); or (b) refund to Buyer the lesser of (1) the amount Buyer paid for the Warranty Item, less depreciation based on a five-year straight line depreciation schedule, and (2) Seller's cost to replace the Warranty Item, in each case as determined by Seller in its sole and absolute discretion following receipt and inspection by Seller of the Warranty Item. For the avoidance of doubt, "provided a replacement for such Product or defective component or part thereof" expressly does not include any removal or reinstallation costs or expenses, including without limitation labor costs or expenses. All exchanged Warranty Items shall become the property of Seller. At the seller's sole discretion, seller may use either new or remanufactured, reconditioned or refurbished components or parts (if in like-new condition), or functionally equivalent components or parts, in the furnishing of replacement(s) for any Warranty Item.

4.3 Limitations. The foregoing warranty is limited, and does not extend to, and Seller shall incur no liability for: (a) lumen maintenance of the Products; (b) color shift of light output of the Products; (c) degradation or discoloration of the Product housing(s); (d) damage to the Product wiring after buyer receipt of the product; or (e) mechanical or cosmetic deterioration of the Products associated with normal wear and tear. For clarity and without limiting the generality of the foregoing, the foregoing warranty does not apply if a Product's light engine continuously generates light at any intensity, regardless of whether such intensity has decreased since the date of first use of such Product (*viz.*, **warranty coverage only applies in the event that such light module generates no light or generates light intermittently**).

4.4 Exclusions; Buyer Indemnification. The foregoing warranty shall be void with respect to defective conditions or non-conformities of the Products resulting from: (a) modifications of Products not authorized by Seller; (b) misuse, neglect, accident or abuse, improper wiring, repairing, splicing, alteration, installation, storage or maintenance; (c) use in a manner not in accordance with Seller's published operating specifications or instructions for the applicable Products; or (d) Product defects caused by Buyer's combination of the Products with equipment provided or manufactured by third party vendors (unless Seller is advised, in writing, of such proposed combination and Seller thereafter consents in writing to such combination). Buyer shall indemnify, defend and hold harmless Seller from and against all third party claims, losses, damages and other liabilities arising from the circumstances described in this Section 4.4.

4.5 DISCLAIMER. THE EXPRESS WARRANTIES IN THIS SECTION 4 ARE THE ONLY WARRANTIES GRANTED BY SELLER AND THE REMEDIES IN THIS SECTION 4 ARE THE SOLE AND EXCLUSIVE REMEDIES FOR BREACH OF SUCH WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 4, SELLER MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, AND SELLER EXPRESSLY DISCLAIMS ALL SUCH OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF QUALITY, CONDITION, TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

5. Intellectual Property Rights. Except as expressly described in these Terms and Conditions, Seller does not grant and Buyer shall have no right, license or other interest in any of the patents, copyrights, trademarks, or trade secrets owned, used or claimed by Seller and/or its licensors that are used to create the Products or are embodied in the Products ("Intellectual Property Rights"). All rights to such Intellectual Property Rights are and will remain the exclusive property of Seller and/or its licensors subject to the limited rights expressly granted to Buyer by these Terms and Conditions. Title to and ownership of the Intellectual Property Rights shall remain at all times the property of Seller or its licensors, as applicable.

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6. INTELLECTUAL PROPERTY INDEMNIFICATION.

6.1 Exclusions; Buyer Indemnification. Notwithstanding anything to the contrary contained in these Terms and Conditions or any other agreement or writing between Buyer and Seller, Seller shall have no obligation to indemnify Buyer for any Third Party IP Claim to the extent that it arises from: (a) Seller's adherence to design modifications, specifications or written instructions which Seller is directed by Buyer to follow; or (b) Buyer's combination of the Products with equipment provided or manufactured by third party vendors (unless Seller is advised, in writing, of such proposed combination and Seller thereafter consents in writing to such combination); and Buyer shall indemnify, defend and hold Seller harmless from and against all claims, losses, damages and other liabilities arising from the circumstances described in this Section 6.3.

7. Limitation of Liability. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL SELLER BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, MULTIPLE OR PUNITIVE DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, OF ANY KIND WHATSOEVER (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF GOODWILL, LOSS OF USE OF THE PRODUCTS, DOWNTIME OR COSTS OF SUBSTITUTE PRODUCTS OR EQUIPMENT) ARISING FROM THE SALE AND/OR DELIVERY OF THE PRODUCTS OR ANY OTHER ACT OF SELLER IN CONNECTION WITH THESE TERMS AND CONDITIONS, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL SELLER BE LIABLE FOR DAMAGES HEREUNDER IN EXCESS OF AGGREGATE AMOUNTS ACTUALLY RECEIVED BY SELLER FROM BUYER FOR THE PRODUCT THAT GIVES RISE TO THE CLAIM. THIS PARAGRAPH WILL SURVIVE FAILURE OF AN EXCLUSIVE OR LIMITED REMEDY.

8. GENERAL.

8.1 Entire Agreement; Amendments; No Waiver. These Terms and Conditions supersede all prior and contemporaneous agreements, representations and warranties and contain the entire agreement between the parties. No amendment, modification, termination, or waiver of any provision of these Terms and Conditions shall be effective unless it is in writing and signed by a duly authorized representative of Seller. No failure or delay on the part of either party in exercising any right or remedy under these Terms and Conditions shall operate as a waiver of such right or remedy.

8.2 Successors and Assigns. These Terms and Conditions shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

8.3 Governing Law. These Terms and Conditions shall be governed in accordance with the laws of the State of Connecticut, U.S.A. (without regard to its conflicts of laws principles).

8.4 Severability; Headings. The provisions of these Terms and Conditions are severable. In the event that any provision contained in these Terms and Conditions are held unenforceable or invalid, the remaining provisions shall be given full effect. Headings in these Terms and Conditions are included for reference only and shall not constitute a part of these Terms and Conditions for any other purpose.

8.5 Force Majeure. Except with regard to obligations to pay sums due hereunder, neither party shall be held responsible for any delays or failure in performance caused in whole or in part by fires, strikes, floods, embargoes, labor disputes, delays or failures of subcontractors, acts of sabotage, riots, accidents, delays of carriers, voluntary or mandatory compliance with any governmental act, regulation or request, acts of God or by public enemy, or any other causes beyond the party's reasonable control (a "Force Majeure Event"). If a Force Majeure Event shall occur, the defaulting party may elect to either: (a) suspend these Terms and Conditions for the duration of the delaying cause; or (b) extend the duration of these Terms and Conditions by the length of time the contingency endured. In all cases, the nondefaulting party may terminate these Terms and Conditions without liability in the event the Force Majeure Event endures or is reasonably expected to endure for a period of greater than ninety (90) days.